BRIEF IN SUPPORT OF PETITION

Statement

A statement of the nature of the case, the statutes involved, the question presented, and the manner in which the jurisdiction of this Court is invoked, is set forth in the annexed petition. In the interest of brevity, this statement is not repeated here.

ARGUMENT

The use of petitioner's alleged voluntary confession to obtain his conviction constitutes a violation of his rights and a denial of due process under the Fourteenth Amendment to the Constitution of the United States.

The charge of the Trial Court, which settles the law of the case, establishes the fact that, exclusive of the confession, the other evidence is insufficient to sustain the verdict of conviction (R. 896). Therefore, unless the confession was properly admitted in evidence the conviction of petitioner cannot stand.

There is no denial of the fact, and the record shows, that the arrest of the petitioner by the police at Toronto, Canada, took place on Monday, October 25th, 1943 at about 8 A. M., without a warrant or indictment, and that he was not arraigned any place until Friday, October 29th, 1943, four days or approximately ninety-six hours later. His alleged voluntary confession was obtained on October 28th, 1943 at about 2:45 P. M., seventy-eight hours after

the arrest in Toronto and approximately twenty-two hours after arrival in New York City. There is no denial of the fact that petitioner was extensively questioned and examined in Toronto for long hours, or that he was subjected to still further questioning without sleep for twenty-two hours after his arrival in New York City. The record further discloses evidence of vigorous treatment which was deliberately calculated and designed to overcome and subjugate the will of the petitioner. There is little room to doubt that this wilful detention of the petitioner for questioning without arraignment before a Magistrate within a reasonable time after his arrest was done, "for the purpose of subjecting him to an inquisition impossible thereafter" (*People* v. *Mummiani*, 258 N. Y. 394), in order to force an admission of guilt. At no point in the record is there any evidence or offer of evidence by the arresting officers who were on the witness stand to explain or justify the failure to arraign the petitioner in the manner provided by the laws of the State of New York.

The Code of Criminal Procedure of the State of New York (§ 395) provides that the confession, of a defendant can be given in evidence against him, unless made under the influence of fear produced by threats. The threat may be implied as well as expressed (*People* v. *Pantano*, 239 N. Y. 416, 419), and a confession that is not the product of a mind that is free and unconstrained is invalid (*People* v. *Pignataro*, 263 N. Y. 229, 240). The Code of Criminal Procedure (Sec. 165) also provides that the accused must in all cases be taken before a Magistrate without unnecessary delay; the failure to obey this statute is a crime (New York Penal Law, § 1844).

The practice of illegally detaining persons suspected of crime without arraignment before a Magistrate has been vigorously denounced and condemned by the New York courts, which have characterized this conduct by such words as "inquisition," "oppression" and "crime" (*Peo-*

ple v. *Kennedy*, 159 N. Y. 346, 361; *People* v. *Barbato*, 254 N. Y. 170, 178; *People* v. *Mummiani*, 258 N. Y. 394, 399; *People* v. *Malinski*, 292 N. Y. 360, 386; dissenting opinion of LEHMAN, *C. J.*; *People* v. *Kelly*, 264 App. Div. 14). Those courts have, nevertheless, exercised great restraint in the use of their judicial power to invalidate confessions obtained in this manner. The leading cases in the State of New York hold that a confession is to be excluded from evidence as a matter of law only in cases where the uncontradicted proof clearly shows the involuntary nature of the confession, but the courts have never gone to the extent of holding a confession inadmissible when obtained in defiance of the statute requiring prompt arraignment. They have held consistently that illegal detention is a mere circumstance to be weighed by the jury in deciding the factual question of whether or not such confession was coerced. Examination of these cases discloses that the only times the Court has exercised its power to exclude confessions as a matter of law have been in cases where some physical abuse was used either alone or in conjunction with other coercive practices. Seldom, if ever, have the New York Courts exercised their power to invalidate confessions where the proof establishes psychological, rather than physical pressure (*People* v. *Trybus*, 219 N. Y. 18; *People* v. *Doran*, 246 N. Y. 409; *People* v. *Weiner*, 248 N. Y. 118; *People* v. *Barbato*, 254 N. Y. 170; *People* v. *Mummiani*, 258 N. Y. 394; *People* v. *Pignataro*, 263 N. Y. 229; *People* v. *Alex*, 265 N. Y. 192; *People* v. *Elmore*, 277 N. Y. 397; *People* v. *Kelly*, 264 A. D. 14).

Courts exercising jurisdiction in Federal matters, on the other hand, have excluded confessions, as a matter of law where the evidence shows that the confession was obtained from an accused while under detention in violation of a Federal statute requiring prompt arraignment. The reasons for this principle of law, which are clearly stated in *McNabb* v. *U. S.*, 318 U. S. 332, 63 S. Ct. 608, 87 L. ed. 819, are worth repeating:

> "* * * Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard—not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the 'third degree' which, although universally rejected as indefensible, still find their way into use. It aims to avoid all the implications of secret interrogation of persons accused of crime. It reflects not a sentimental but a sturdy view of law enforcement. It outlaws easy but self defeating ways in which brutality is substituted for brains as an instrument of crime detection. A statute carrying such purpose is expressive of a general legislative policy to which courts should not be heedless when appropriate situations call for its application."

This doctrine and the reasoning upon which it is founded was followed with approval in *U. S.* v. *Mitchell,* 322 U. S. 65, where the Court reiterated that, "Inexcusable detention for the purpose of illegally extracting evidence from an accused, and the successful extraction of such inculpatory statement by continuous questioning for many hours under psychological pressure, were the decisive features in the *McNabb* case which lead us to rule that a conviction on such evidence could not stand." The rule enunciated by these cases is confined exclusively to criminal trials in the United States courts, but similar reasoning should apply in state courts when the laws of the state provide for prompt arraignment as in the case of the Federal laws. Neither the rule or the reasoning of the *McNabb* case has been followed by the courts of the State of New York.

There is no comprehensive definition of "due process" (*Twining* v. *U. S.*, 211 U. S. 78, 53 L. ed. 97), and a state is at liberty to prescribe the mode of procedure by which

a fair opportunity is accorded to an accused to defend himself (*Hooker* v. *Los Angeles,* 188 U. S. 314; *Hurtado* v. *California,* 110 U. S. 516, 28 L. ed. 232; *Palko* v. *Connecticut,* 302 U. S. 319, 82 L. ed. 288; *Lisenba* v. *California,* 314 U. S. 219, 86 L. ed. 166). However, when a state has prescribed a mode of criminal procedure that requires prompt arraignment of an accused, and has also made it a crime for any law enforcement officer to deny or delay that procedure unnecessarily, such delay or denial is a denial of the process of law which the state has established for all persons accused of crime and a denial of due process of law under the United States Constitution. It also follows that when a state has decreed that the failure to comply with the provisions of the law requiring prompt arraignment of an accused is a crime, a confession obtained during that proscribed period must be regarded as having been obtained during the commission of a crime, and consequently tainted with illegality from inception.

This Court has emphatically adhered to the rule that the minimal requirements of due process are violated by the use of a confession extorted from an accused by overpowering his mental freedom in cases where the only force applied is psychological (*Ashcraft* v. *Tennessee,* 322 U. S. 143, 88 L. ed. 1192; *Lyons* v. *Oklahoma,* 322 U. S. 596, 88 L. ed. 1481; *Malinski* v. *N. Y.,* .... U. S. ...., Oct. 1944 Term, No. 367, decided March 26, 1945; 89 L. ed. Adv. Op. 738). Although reluctant to interfere with state court decisions, this Court has never hesitated to intervene for the purpose of making its own independent examination in the interests of justice when warranted by the facts (*Chambers* v. *Florida,* 309 U. S. 227, 228, 84 L. ed. 716; *Lisenba* v. *California,* 314 U. S. 219, 240, 86 L. ed. 166; *Ward* v. *Texas,* 316 U. S. 547, 550, 86 L. ed. 1663; *Ashcraft* v. *Tennessee,* 322 U. S. 143, 88 L. ed. 1192; *Lyons* v. *Oklahoma,* 322 U. S. 596, 88 L. ed. 1481). The applicable decisions of this Court have denounced a conviction based on a confession obtained dur-

ing the illegal detention of an accused while he is held incommunicado and questioned by relays of inquisitors as a violation of that fundamental fairness which is the concept of justice itself, and prevents a fair, impartial trial in violation of the Fourteenth Amendment to the United States Constitution (*Ashcraft* v. *Tennessee*, 322 U. S. 143). The plain import of the decision in that case, and others which have followed in this court, is that no conviction based on a confession obtained after illegal detention and prolonged questioning will be permitted to stand.

The uncontradicted evidence of the circumstances attending the arrest, psychological pressure, persistent questioning and the unexplained, unjustified delay in arraignment of petitioner, presents clear and convincing evidence of the illegal and inherently coercive procedure under which the self-incriminating admissions were obtained. The use of this evidence, without which there could be no conviction, constitutes a denial of due process of law within the meaning of the Fourteenth Amendment to the United States Constitution.

CONCLUSION

The petition presents a substantial question of Federal law which ought to be reviewed by this Court. Accordingly, the writ prayed for should issue.

Respectfully submitted,

EDWARD V. BRODERICK,
Attorney for Petitioner.